IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

Crl.Rev.Pet.No. 434 of 2000()

CC.31/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM
CRA.200/1998 of SESSIONS COURT, KOLLAM

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REVN. PETITIONER:

VIJAYAKUMAR, S/O MANIYAN,
THEKKEPLAVILA VEEDU, MEENATHU CHERRY,
ERAVUKADU, AMPALAPUZHA, ALAPPUZHA

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)

RESPONDENTS:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, EKM

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU,J

Crl.R.P.No. 434/2000

Dated this 14th day of September, 2007

O R D E R

The revision petitioner who is the second accused in C.C.31/1997 on the file of the J.F.C.M-II, Kollam, was tried for the offence punishable under Sections 279, 337 and 304A IPC and was convicted and sentenced to undergo simple imprisonment for six months for the offence punishable under Section 279 IPC and simple imprisonment for six months for the offence under Section 304A IPC. No separate sentence was awarded to the offence under Section 337 IPC. The first accused stood acquitted. The appellate Court confirmed the conviction and sentence imposed. Hence this revision.

2. The case of the prosecution is that on 28.10.1996 at 2.30 a.m at Sakthikulangara near Cheppalli Mukku, the car driven by the first accused through the national highway from west to east hit on an autorikshaw driven by the second accused that was coming from east to west when the auto driver suddenly turned the vehicle towards the right side.

3. The evidence adduced in the matter consisted of the testimony of Pws 1 to 11 and Exts.P1 to P14. The occurrence witnesses are Pws1 to 3. PW1 is the husband of the deceased Margret who was a traveller in the autorikshaw. PW1 was being taken to the hospital as he was having fever. He has stated that the auto, proceeding through left side of the road, suddenly turned towards the right and the car that was coming to the opposite direction was also driven in a rash and negligent manner. PW3, another occurrence witness, turned hostile. PW2 was standing on the side of the road talking with PW3 near his residence. He has stated that the accident took place only due to the rash and negligent driving of the auto drier. Ext.P11, the scene mahazar, would show that the accident took place at 3.60 metres towards the north from the southern tar end of the road which is having a width of 7.10 metres. The scene mahazar would also show that the auto had sustained damages on the side of the rear left wheel. It is an indication that the accident might have occurred when the auto turned towards the right. His version is

specific as to the fact that the auto was taken suddenly towards the right side.

4. The identity of A2 stands proved from the version of PW7, the owner of autorikshaw. He has stated that it was A2, the revision petitioner, who was driving the auto at that time. There is no cross examination at that point. A2 when questioned under Section 313 IPC has admitted that he was driving the auto at that time. In such circumstances, there is no scope of disputing the identity of the accused. Death of the wife of PW1 consequent on the injury sustained in the accident is proved by the evidence of PW9, the doctor, who has issued the postmortem certificate. The evidence of motor vehicle inspector and the reports of the inspection of the vehicles would show that at the time of accident, there was no mechanical defect to the vehicles. In such circumstances, I find that the conviction is only to be confirmed.

5. Counsel for the revision petitioner has pleaded for leniency. It is more than ten years since the commencement of the prosecution and it is submitted

that the entire family is depending on his income for the livelihood. Considering all these circumstances, the sentence imposed on the revision petitioner under Section 304A IPC is modified to imprisonment till the rising of the Court and to pay an amount of Rs.15,000/- towards compensation to the L.Rs of the deceased and in default to undergo simple imprisonment for three months. No separate sentence is awarded to the rest of the offences. The revision petitioner is given three months' time to remit the amount of compensation. He shall appear before the J.F.C.M-II, Kollam, on 18.12.2007 to receive the sentence.

The revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

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